IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 147 of 2002
IN
SPECIAL CIVIL APPLICATIONNo 4050 of 1990

WITH
CIVIL APPLICATION No 2862 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DINESH VENILAL MEHTA

Appearance:

1. LETTERS PATENT APPEAL No. 147 of 2002
MR HARDIK C RAWAL for Appellant No.
MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Admit, service of which is waived by Mr. Upadhyay, learned advocate appearing for Mr. Mukesh H. Rathod for the respondent.

1. The present appeal is arising against the judgment and order dated 19/2/2002 passed by the learned Single Judge of this Court (Coram : D.A. Mehta, J.) in Special Civil Application No. 4050 of 1990 whereby the learned Single Judge partly allowed the writ petition filed by the respondent workman only on the point of back wages.

2. The respondent workman was working as Depot Manager, Savarkundla with the appellant corporation. During his posting at the said station, the charge-sheet came to be issued on 21/4/1982 by the Divisional Controller, Amreli. The charges levelled against him was to the effect that he failed to carry out his duties in taking adequate care of spare parts and machineries, resulting in damage of lacs of rupees to the corporation because of sheer negligence of the workman. After holding departmental inquiry against the workman, the charges were found to be proved and, therefore, he was dismissed from the service. The said order of dismissal was challenged by the workman before the first appellate authority which upheld the order of the disciplinary authority. Therefore, the workman preferred second appeal before the second appellate authority. The second appellate authority after having fully heard the workman, was of the clear opinion that the disciplinary authority had not committed any error in coming to the conclusion that the charges were found to be proved against the workman. However, considering the overall circumstances of the case and the long service of the workman, the second appellate authority considered the case of the workman sympathetically and modified the order of dismissal into stoppage of increment for a period of two years with future effect. The said order was communicated to the workman by a letter dated 15/11/1988. The same was challenged by the workman before this Court by way of writ petition being Special Civil Application No. 4050 of 1990. The same came up for final disposal before the learned Single Judge on 19/2/2002. Before the learned Single Judge the order of disciplinary authority

modified by the second appellate authority was challenged but the learned Single Judge was not impressed by the said challenge and, therefore, the impugned order of penalty was not interferred with by the learned Single Judge. However, from the order passed by the second appellate authority, he was of the opinion that no reasons were assigned by the second appellate authority for denying the back wages. Therefore, the learned Single Judge partly allowed the writ petition filed by the workman on the point of back wages and directed the respondent Corporation to compute the back wages for the period from the date of dismissal till the date of reinstatement within a period of four weeks from today and pay the same to the workman within a week thereafter. This order has been challenged by the appellant Corporation in this appeal.

3. Learned counsel Mr. Raval for the appellant Corporation vehemently submitted that the second appellate authority was rather more liberal to the workman in modifying the order of punishment. He submitted that taking into consideration his long service as well as family circumstances, the second appellate authority was of the considered opinion that the order of dismissal was harsh and, therefore, he modified it by imposing penalty of stoppage of two increments with future effect. In that view of the matter, there was no question of awarding back wages. He, therefore, submitted that the learned Single Judge was obviously in error in holding that while passing the order, the second appellate authority has not assigned any reasons for denying back wages. He submitted that no reasons were assigned by the second appellate authority for refusing back wages.

4. However, learned counsel Mr. Rathod appearing in response to the notice issued by this Court on behalf of the workman vehemently submitted that the second appellate authority as well as the disciplinary authority committed an error in passing the orders of punishment against the workman. He submitted that the impugned order of penalty was passed in clear violation of principles of natural justice. He, therefore, submitted that the learned Single Judge ought to have set aside the order of dismissal modified with stoppage of increments of two years with future effect. We are afraid, we cannot accept the submission of Mr. Rathod because there was no challenge to this part of the order passed by the learned Single Judge. It is clear from the order of the learned Single Judge that he had entertained the petition of the workman only on the point of back wages. From the

order of the learned Single Judge it is clear that he has committed obvious error in holding that while refusing the back wages, the second appellate authority has not assigned any reasons. Once the second appellate authority has come to the conclusion that the charges were proved against the delinquent and the order of penalty is modified, then there was no question of awarding back wages. Under the circumstances, no separate reasons were required to be assigned by the second appellate authority for denying the back wages.

5. We may make it clear that this appeal is disposed of at admission stage as while issuing notice on 16/4/2002 the Division Bench of this Court made it clear that it is for final disposal.

6. In view of the above discussions, the appeal is allowed. The judgment and order dated 19/2/2002 passed by the learned Single Judge in Special Civil Application No. 4050 of 1990 partly allowing the writ petition on the point of back wages is hereby quashed and set aside. The net result is that the order of the second appellate authority is restored to file. No order as to costs.

No order on Civil Application as the main appeal is allowed.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.